

**CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON**

KITSAP CITIZENS FOR RURAL)	
PRESERVATION,)	Case No. 05-3-0039
)	
Petitioners,)	<i>(KCRP V)</i>
)	
v.)	
)	ORDER OF DISMISSAL
KITSAP COUNTY,)	
)	
Respondent.)	
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I. BACKGROUND¹

On July 13, 2005, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Kitsap Citizens for Rural Preservation (**Petitioner** or **KCRP**) challenging Kitsap County's (**Respondent** or **County**) adoption of Ordinance No. 336-2005, which amended the Kitsap County Zoning Code to include race tracks as a conditional use in certain zones.

The Board issued its Prehearing Order on August 15, 2005, following the prehearing conference. The Prehearing Order established the schedule for motions, briefing and hearing on the merits, and set January 19, 2006 as the date the Final Decision and Order would be due.

In September, 2005, the Board received timely motions from the parties, supported by briefs and exhibits. The Board's Order on Motions was issued October 20, 2005.

On October 31, 2005, the Board received a Joint Motion and Agreed Order for Extension to Pursue Settlement Discussions. In the Joint Motion, Petitioners KCRP and Respondent Kitsap County stipulate to extend the time of all the deadlines in the PHO by 30 days in order to pursue settlement discussions. On November 1, 2005, the Board issued its Order Granting Settlement Extension and Amending Case Schedule.

On December 1, 2005, the Board received Petitioner's Status Report, indicating that Ordinance No. 336-2005 was repealed by Kitsap County on November 20, 2005. On December 7, 2005, the Board received a Stipulation and Order of Dismissal with Prejudice signed by both Petitioner and Respondent.

¹ A procedural chronology of this matter is attached as Appendix A.

II. DISCUSSION AND ORDER

The Board's Rules of Practice and Procedure at WAC 242-02-720 provide in part:

Any action may be dismissed by a Board:

(1) When all parties stipulate.

Petitioner Kitsap Citizens for Rural Preservation (KCRP) and Respondent Kitsap County are the only parties to this case. Prehearing briefs have not yet been submitted by either party.² The Stipulation and Order of Dismissal with Prejudice was submitted by Petitioner and Respondent jointly. The parties stipulate that the matter has been settled and request an order of dismissal with prejudice.

Having considered the PFR, the filings of the parties, the Board's prior Orders, the GMA, and the Board's rules, the Board **ORDERS:**

- The matter of *KCRP V v. Kitsap County*, CPSGMHB Case No. 05-3-0039, is **dismissed with prejudice**.

- The scheduled hearing on the merits is **cancelled** and this matter is **closed**.

So ORDERED this 7th day of December, 2005.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Bruce C. Laing, FAICP
Board Member

Edward G. McGuire, AICP
Board Member

Margaret A. Pageler
Board Member

Note: This Order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.

² The Amended Case Schedule established December 7, 2005, as the deadline for filing Petitioners' Prehearing Brief and December 21, 2005, as the deadline for filing Respondent's prehearing brief.

APPENDIX A

Chronology of Procedure in CPSGMHB Case No. 05-3-0039

On July 13, 2005, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Kitsap Citizens for Rural Preservation (**Petitioner** or **KCRP**). The matter was assigned Case No. 05-3-0039, and is hereafter referred to as *KCRP V v. Kitsap County*. Board member Margaret Pageler is the Presiding Officer for this matter. Petitioner challenges Kitsap County's (**Respondent** or **County**) adoption of Ordinance No. 336-2005, which amended the Kitsap County Zoning Code, as noncompliant with the Growth Management Act (**GMA or Act**) and the State Environmental Policy Act (**SEPA**).

On July 19, 2005, the Board received a Notice of Appearance from Shelley Kneip and Jennifer Forbes, Kitsap County Prosecuting Attorney's Office, on behalf of Kitsap County.

On July 18, 2005, the Board issued its Notice of Hearing, establishing the prehearing conference and setting a tentative schedule for this matter.

On August 15, 2005, the Board received Respondent's Index (**Index**).

On August 15, 2005, the Board conducted the Prehearing Conference (**PHC**) at Suite 2430, Union Bank of California Building, 900 Fourth Avenue, Seattle. Board member Margaret Pageler, Presiding Officer in this matter, conducted the conference, with Board member Bruce Laing and Board extern Heather Bowman in attendance. Claudia Newman represented Petitioner KCRP, and was accompanied by Charlie Burrows and Tom Donnelly. Shelley Kneip and Jennifer Forbes represented Respondent Kitsap County.

The Board discussed with the parties the possibility of settling or mediating their dispute to eliminate or narrow the issues. The Board encourages such efforts and can arrange for mediation or settlement assistance by members or the Eastern or Western Growth Management Hearings Boards. If the parties are pursuing settlement, with or without Board assistance, they may so stipulate in a request for a settlement extension. The Board is empowered to grant settlement extensions for up to ninety days.

The Board then reviewed its procedures for the hearing, including the composition of the Index to the record below; filing of core documents, exhibit lists and supplemental exhibits; dispositive motions; the Legal Issues to be decided; and a Final Schedule. The Respondent indicated intent to file dispositive motions.

On August 15, 2005, the Board issued its Prehearing Order, establishing the issues to be decided in this case and setting the schedule for motions and hearing.

On August 15, 2005, the Board received Respondent's Preliminary Index to the Record.

Motions

On September 8, 2005, the Board received Kitsap County's Motion to Dismiss, with nine exhibits. With the Motion to Dismiss were two Certificates signed by Debbie Meyer, Kitsap County Prosecuting Attorney's Office, verifying transcripts of Kitsap County Commissioners public hearings on November 17, 2003 indexed as #27852 and on October 15, 2003, indexed as #27811. The bases for the Motion to Dismiss are timeliness, standing, and failure to exhaust administrative remedies.

On September 21, 2005, the Board received KCRP's Response to Kitsap County's Motion to Dismiss. With KCRP's Response was the Declaration of Thomas F. Donnelly with attached exhibit of excerpts from a document titled "From the Green Flag to the Checkered Flag We'll Bring the Project Home," prepared by the Kitsap Economic Development Council.

On September 21, 2005, the Board also received KCRP's Motion for Leave to File a Motion to Supplement and KCRP's Motion to Supplement the Record requesting leave to submit Ordinance 336-2005 and Notice of Adoption of Ordinance 336-2005. On September 28, 2005, the Board received KCRP's Withdrawal of Motions on Supplementation, noting that the items requested for supplementation were already indexed in the record. KCRP also filed an Errata, providing corrected Index citations for certain pages of its Response to Motion to Dismiss.

On September 29, 2005, the Board received Kitsap County's Reply Regarding Motion to Dismiss with one exhibit. On September 29, 2005, Kitsap County also filed Kitsap County's Motion to Strike, seeking to strike the Declaration of Thomas F. Donnelly and attached exhibit.

On October 6, 2005, the Board received KCRP's Response to Kitsap County's Motion to Strike.

On October 20, 2005, the Board issued its Order on Motions denying Kitsap County's Motion to strike certain exhibits, denying a motion to dismiss the petition as untimely, and deferring decision on SEPA standing for hearing on the merits.

Settlement and Dismissal

On October 31, 2005, the Board received a Joint Motion and Agreed Order for Extension to Pursue Settlement Discussion, signed by attorneys for both parties. On November 1, 2005, the Board issued its Order Granting Settlement Extension and Amending Case Schedule. The Order granted a thirty day extension, as requested by the parties, and required a petitioner's status report on December 1, 2005. On that date, the Board received Petitioner's Status Report which indicated that the ordinance at issue was repealed by Kitsap County on November 20, 2005.

On December 7, 2005, the Board received a Stipulation and Order of Dismissal with Prejudice signed by both Petitioner and Respondent. The Board's Order of Dismissal was issued December 7, 2005.